


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
NOV 16 2009

CLERK

DOUGLAS WILFRED WHITE,)	CIV. 09-5037-RHB
)	
Petitioner,)	
)	
vs.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Petitioner, having received certification from the Eighth Circuit Court of Appeals to file a successive petition, filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2255. His petition alleged three grounds for relief: actual innocence, unfairness of the trial, and ineffective assistance of counsel. The Court concluded that petitioner's claims were time-barred and dismissed the action. Petitioner moved for reconsideration. The Court reviewed the motion and again determined that the petition was time-barred. Petitioner has now filed a notice of appeal and the Court must determine if a certificate of appealability shall issue. See Tiedemen v. Benson, 122 F.3d 518 (8th Cir. 1997).


Title 28 of the United States Code, section 2253 provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the

denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Orders dated September 8, 2009, and October 21, 2009, the Court concludes that there are no issues upon which petitioner has made a substantial showing of the denial of a constitutional right. See also Fed. R. App. P. 22(b). Accordingly, it is hereby

ORDERED that a certificate of appealability is denied.

Dated this 13th day of November, 2009.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE